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District Court

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For The Northern Mariana Islands
By _____
(Deputy Clerk)

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Criminal Case No. 08-00002

Plaintiff,

v.

MOTION AND MEMORANDUM OF LAW
IN SUPPORT OF PROPOSED JURY
INSTRUCTIONS 20 & 21.

AMIN, MOHAMAD RUHUL,

Hearing: March 7, 2008

Time: 9:00 a.m.

Judge: Hon. Alex R. Munson

Defendant.

COMES NOW, the United States of America, by and through its undersigned attorneys, to hereby submit the following Motion and Memorandum of Law in support of its use of Proposed Jury Instructions 20 and 21, regarding marriage fraud and the definition of certain terms relevant to this case.

BACKGROUND

On January 22, 2008, a Grand Jury returned a three-count superseding indictment against Mohamad Ruhul Amin, the defendant, charging him with conspiracy, providing false information in an application for a U.S. passport, and subornation of perjury. The case is set for a jury trial to begin on March 10, 2008 at 9 a.m. On February 27, 2008, counsel for both parties met with the Court in chambers for a pre-trial conference. During that conference, the government noted that this case will present certain issues of first impression and legal questions that are unique because of the

1 Commonwealth's relationship to the United States. In order to avoid confusion and unnecessary
2 delay, the parties agreed that these issues should be fully-briefed and resolved prior to trial.
3 Accordingly, the Court ordered that the parties submit any filings by March 3, 2008. On February
4 29, 2008, the government provided the defendant with proposed jury instructions, two of which (Jury
5 Instructions 20 and 21) addressed the problems at issue. Pursuant to the Court's order, the
6 government now submits this Motion and Memorandum of Law in support of those jury instructions.

7 ISSUES PRESENTED

8 **I. Proposed Jury Instruction for Determination of a Valid Marriage.**

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10 The government alleges that the defendant made, and conspired to make, false or fraudulent
11 statements in an application for a U.S. passport. Specifically, he and his putative wife Rose Mayo
12 Omar Reyes (hereinafter "Reyes") submitted a Form DS-11, Application for a United States
13 Passport, to the U.S. Passport Office located in Susupe, Saipan, both knowing that the application
14 contained false or fraudulent statements. Because the defendant asked Reyes to submit the
15 application and to swear to its truthfulness under oath, he is also charged with suborning perjury.
16 The statements in question were that the defendant and Reyes were married, and that Reyes' family
17 name was "Amin" (the putative wife having adopted the defendant's family name). As alleged, the
18 statements are fraudulent because the marriage is fraudulent. At trial, the government intends to
19 introduce evidence that the defendant entered into the marriage for the purpose, and only for the
20 purpose, of obtaining immigration benefits.

21
22 Title 8, United States Code, Section 1325(c) imposes a criminal penalty for entering into
23 such marriages. However, it is, at best, unclear whether this provision of the Immigration and
24 Nationality Act applies in this jurisdiction because of Section 503(a) of the Covenant Establishing
25 the Commonwealth of the Northern Mariana Islands.¹ As such, the defendant was not charged under

26
27 ¹ Section 503(a) establishes that the "immigration and naturalization laws of the United States"
28 do not apply in the Commonwealth of the Northern Mariana Islands. Although Section 506 provides
certain exceptions (in other words, federal immigration laws that do apply), the statute addressing

1 this statute.² Nonetheless, the government alleges that because the marriage was fraudulent under
 2 any applicable standard, and the defendant and his putative wife knew that it was a fraud when they
 3 stated they were married on a federal immigration form, they have violated federal law.

4 It seems necessary that before the jury can reach a determination of guilt or innocence on the
 5 charges filed, either the Court or the jury must determine as a predicate fact that the marriage was
 6 fraudulent. Assuming it is the jury, the government proposes the following jury instruction:

7
 8 Jury Instruction 20: Fraudulent Marriage

9 In order to determine guilt or innocence in any of the three charges alleged in the
 10 Indictment, you must first decide whether the marriage between the defendant and Rose
 11 Mayo Omar Reyes was valid or fraudulent. The following will be helpful to you in
 12 reaching this determination:

13 *Definition:* A valid marriage is where, on the day of the wedding, the bride and groom
 14 intended to enter a life that conforms with the common understanding of the duties and
 15 obligations of marriage.

16 *Effect:* Should you determine that the marriage was not valid, then the law says it is as if the
 17 marriage never took place. In other words, a marriage determined by you to be fraudulent is
 18 a marriage that never existed for any legal purpose.

19 The “definition” above is a modified jury instruction approved by the Ninth Circuit in a
 20 marriage fraud case charged under Title 8, United States Code, Section 1325(c). See United States
 21 v. Ding, 187 F.3d 649 (9th Cir. 1999). The “effect” instruction above is based on long-standing
 22 federal law establishing that marriages entered into for the purpose of obtaining immigration benefits
 23 are not, in fact, marriages at all. See e.g., United States v. Rubenstein, 151 F.2d 915, 918 (2nd Cir.
 24 1945). The United States Supreme Court has affirmed that such marriages are void *ab initio*, and all
 25 the rights and privileges that would otherwise attach to a marriage are also void *ab initio*, including

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 27 fraudulent marriages does not appear to fall under any of those exceptions. The government does not
 28 concede that the federal marriage fraud statute is inapplicable in the Commonwealth, but does not find
 it necessary to address that question here.

² Under C.N.M.I. law, it is also a crime to knowingly enter a marriage “for the sole purpose of
 obtaining a labor or immigration benefit, or for the purpose of evading any provision of [relevant
 C.N.M.I. immigration laws] or any United States immigration law...” 3 CMC § 4366(a).

1 the right to immigration benefits and testimonial privileges. United States v. Lutwak, 344 U.S. 604,
2 614-615 (1953).

3 The Ninth Circuit case of Johl v. United States, 370 F.2d 174 (9th Cir. 1966) is particularly
4 instructive to the issue at hand. In Johl, the defendant argued that because he and his putative wife
5 had undergone a ceremony, they were legally married, and nothing more was required. According to
6 the defendant, he had made no material misstatement and could not be subject to prosecution under
7 Section 1542, when he included his marital information on an application to change his immigration
8 status. The appellate court rejected this argument. Applying the principles of Lutwak, the court
9 held:

10 The immigration law, in granting advantages to those who have married American
11 citizens, is not talking about ceremony or legality-the taking of those steps which
12 enable a couple lawfully to live together in a marital relationship. It is talking about
the marital relationship itself-an actual joining together as husband and wife.

13 Id. at 177.

14 Significantly, the Johl court did not view the marriage ceremony as an event that
15 nullified the criminal intent. On the contrary, the court considered the ceremony to be
16 another step in furtherance of a conspiracy whose ultimate purpose was to defraud the
17 government. Moreover, the Johl court found that his failure to disclose on the application
18 that he had participated in the marriage ceremony for the sole purpose of obtaining an
19 immigration benefit, he had withheld a material fact, the functional equivalent of making an
20 affirmative misrepresentation and therefore a violation of Section 1542. Id. at 177-78.

21 The government's theory in this case is based on principles identical to those
22 established in Lutwak and Johl, namely, that a ceremony, even if cloaked with all the
23 legalities of marriage, does not constitute a marriage if the parties never intended to live
24 together as husband and wife. Moreover, legally speaking, one who avows that such a couple
25 is "married" thereby makes a misrepresentation. The above jury instruction explains this
26 legal principle to the jurors.

II. Proposed Jury Instruction for Definition of Fraudulent Statement.

The defendant will likely argue that, validity of the marriage notwithstanding, there was no knowing and intentional misstatement. That is because the defendant and Reyes *believed* they had a legal marriage, having received something of a ‘stamp of approval’ in the form of their C.N.M.I. marriage certificate. The government respectfully submits that such an argument misstates the law. Indeed, if this argument is not barred outright by the Court, then the following jury instruction should be provided:

Jury Instruction 21: Additional Definitions

The following definitions will be helpful to you:

“False Statement”: A false statement means that the defendant made the statement with a fraudulent purpose in mind. In other words, a statement, while technically true, might still be false if the goal of making that statement was to accomplish a fraud.

“Knowingly”: An act is done knowingly if the defendant is aware of the fact and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

As it is with an analysis of a fraudulent marriage, triers of fact must look to the defendant’s state of mind and the underlying purpose of a statement as they assess whether a statement was false or fraudulent. For example, in a Florida case, a defendant applied for a U.S. passport under a deceased classmate’s name, hoping to use the name on that passport to dupe foreign investors in a fraud scheme. The court noted that, at least in that jurisdiction at that time, it was perfectly legal to adopt any name without resort to a legal proceeding and to apply for a passport under that name. Nonetheless, the trial court found a criminal violation of 18 U.S.C. §1542, because “[t]he deception of an investor is clearly a fraudulent purpose... .” United States v. Wasman, 484 F.Supp. 54, 57 (S.D. Fla. 1979) distinguishing from United States v. Cox, 593 F.2d 46, 48 (6th Cir. 1979)(legal to apply for a new passport under a legally adopted name *unless* the name was adopted for a fraudulent purpose). This principle

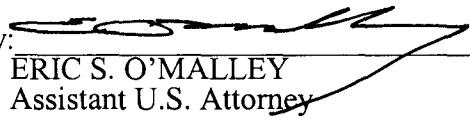
1 is directly applicable in the instant case. The above-described jury instruction is required to
2 inform the jurors of this legal principle.

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4
5 CONCLUSION

6 For the reasons stated herein, the government respectfully requests inclusion of the above-
7 described jury instructions, and permission to present its case based on these principles at trial.

8 Respectfully submitted this 3rd day of March 2008.
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